

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-000862-MR

&

NO. 2008-CA-000888-MR

KENNETH L. RAMSEY
and RAMSEY FARM

APPELLANTS/
CROSS-APPELLEES

APPEAL AND CROSS-APPEAL FROM FAYETTE CIRCUIT COURT
v. HONORABLE PAMELA R. GOODWINE, JUDGE
ACTION NO. 05-CI-02776

DAVID LAMBERT and EQUINE
ANALYSIS SYSTEMS, INC.

APPELLEES/
CROSS-APPELLANTS

OPINION
AFFIRMING IN PART AND REVERSING IN PART

** **

BEFORE: ACREE AND LAMBERT, JUDGES; HARRIS,¹ SENIOR JUDGE.

LAMBERT, JUDGE:² Kenneth Ramsey appeals from a jury verdict in favor of David Lambert awarding fees to Lambert under an oral contract. David Lambert

¹ Senior Judge William R. Harris, sitting as Special Judge by assignment of the Chief Justice Pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

² Judge Lambert is not related to or acquainted with Appellee/Cross-Appellant David Lambert.

cross-appeals from a judgment in favor of Kenneth Ramsey awarding reimbursement of veterinary fees based on the trial court's finding that Lambert was not a licensed veterinarian in the state of Kentucky. After careful review, we affirm in part and reverse in part.

This case concerns an oral contract entered into by Appellees/Cross-Appellants, David Lambert and Equine Analysis Systems, Inc. (hereinafter collectively referred to as "Lambert") and Appellants/Cross-Appellees, Kenneth Ramsey and Ramsey Farm (hereinafter collectively referred to as "Ramsey").

Ramsey is a thoroughbred horse owner, and Lambert is in the business of advising thoroughbred horse owners of potential racing prospects. Lambert uses several techniques to identify racing prospects, one of which is of primary concern in this case. Lambert conducts heart scans on potential horses, during which he uses an ultrasound to take a picture of the horse's heart and then compares the size and shape of the horse's heart to previous race winners in his database.

In the fall of 2001, Ramsey retained Lambert to attend thoroughbred auctions in Kentucky and Florida on his behalf. On October 25, 2001, Lambert sent Ramsey a letter which outlined a number of services Lambert offered to provide through May 1, 2002. On December 4, 2001, Ramsey and Lambert met at Ramsey Farm to discuss the letter. The parties agree that during the December 2001 meeting, Ramsey agreed to retain Lambert to perform a number of the services outlined in the October 25, 2001, letter but disagree as to one portion of the letter entitled "Sales." That paragraph of the letter is as follows:

Sales

Should you wish us to work at a sale then I would do so on the following basis:

- A prearranged fee to cover heart scans and all physical exams
- 2.5% of purchase price
- A bonus in the event a purchase wins major races as follows:
 - (1) A Grade I race = \$50,000
 - (2) A race of \$1M or more = \$50,000
 - (3) For any stallion which goes to stud, 2 breeding rights

At trial both Ramsey and Lambert testified that during the course of the December 4, 2001, meeting, Ramsey agreed that Lambert would go to sales and work for him. Lambert testified that Ramsey agreed to all aspects of the above-quoted portion of the October 25, 2001, letter. Ramsey testified that he agreed to the first two bullet points, but denied that he agreed to the bonus provisions set forth in the third bullet point. Thus, the primary issue the jury was asked to decide was whether Lambert and Ramsey agreed to all three portions of the Sales paragraph of the October 25, 2001, letter, as claimed by Lambert, or just the first two, as claimed by Ramsey.

Pursuant to their contract, Lambert identified and purchased for Ramsey a horse named Roses In May. Roses In May won over five million dollars at the race track, which included a win at the Whitney Handicap in August of 2004 and the Dubai World Cup in March 2005. On November 22, 2004, Lambert sent an invoice to Ramsey for \$50,000 he claimed he was owed as a result of Roses In May winning a Grade I race at the Whitney Handicap. This invoice was not paid.

However, after the win at the Dubai World Cup, Ramsey paid Lambert a bonus of \$50,000. Ramsey testified that he paid bonuses to all his employees at this time and that this bonus was not pursuant to any oral contract between himself and Lambert. Ramsey subsequently sold Roses In May for eight million dollars to Japanese interests. Lambert then claimed he was owed two breeding rights under the terms of the oral agreement, which he valued at \$100,000 each. Thus, he claimed he was entitled to \$250,000 total pursuant to the December 4, 2001, oral agreement.

Ramsey also testified that from 2001 to 2004, Lambert conducted examinations of horses' hearts in Kentucky and Florida to advise Ramsey on their purchase and/or sale. Although Lambert identified Roses In May as a great racehorse, he was the exception. Ramsey testified that of nearly sixty horses selected by Lambert, Roses In May was the only success. Thus, in 2004 Ramsey had decided to terminate his business relationship with Lambert. However as noted above, in March of 2005 Lambert was paid a bonus after Roses In May won the Dubai World Cup.

When Ramsey refused to pay Lambert the \$250,000, Lambert filed the instant action in the Fayette Circuit Court, alleging that Ramsey had breached the oral contract. A year later, Ramsey counterclaimed, alleging that one of the techniques Lambert used to identify successful race horses, "heart scanning," constituted the practice of veterinary medicine. Ramsey claimed that Lambert worked for him in Kentucky and Florida, did not have a veterinary license in either

state, and was therefore engaged in the unauthorized practice of veterinary medicine. Following discovery, the trial court set the matter for trial and bifurcated the proceedings. In the first trial, Lambert presented his breach of contract claim against Ramsey to a jury. In the second trial, Ramsey presented his counterclaim to the trial court in a bench trial.

In August 2007, the jury unanimously found that Lambert and Ramsey had entered into an oral contract that included all three bullet points under the Sales paragraph of the October 25, 2001, letter, that Ramsey breached the contract by failing to pay Lambert bonuses due, and that Lambert was entitled to the full amount of his claim, \$250,000.00.

Prior to the bench trial on Ramsey's counterclaim, the trial court found that heart scanning constituted the practice of veterinary medicine under Kentucky and Florida law. Lambert filed a motion to reconsider, and the trial court affirmed its finding under Kentucky law. The trial court also affirmed its ruling that heart scanning was the practice of veterinary medicine under Florida law, but concluded that Ramsey could not recover any damages for violation of the Florida statute because he had not sought relief under any Florida statute providing a private right of action.

The court then held the bench trial on Ramsey's counterclaim. Ramsey argued he was entitled to recover \$333,050.00, the amount he claimed he paid to Lambert for heart scans in Kentucky and Florida. Lambert disputed this figure and presented evidence that the total amount paid by Ramsey to Lambert for

heart scans in Kentucky was \$17,966.00. After careful review, the trial court awarded Ramsey \$17,966.00 in damages for the heart scans performed in Kentucky. In its April 21, 2008 order, the trial court questioned whether Ramsey should receive anything on his counterclaim based on the fact that he continues to have heart scans performed by an individual who is not licensed to practice veterinary medicine in any state. The court, however, determined that it was bound by its prior ruling that conducting heart scans was the practice of veterinary medicine under Kentucky law and awarded Ramsey the above damages.

Ramsey now appeals the jury's verdict in favor of Lambert, and Lambert cross-appeals the trial court's award to Ramsey for reimbursement of veterinary fees and the court's finding that heart scanning constituted the practice of veterinary medicine in Kentucky and Florida.

For purposes of this appeal, we will address Lambert's cross-appeal first. Lambert claims that the trial court erred in concluding that heart scanning constituted the practice of veterinary medicine under Kentucky law. The interpretation of a statute is a matter of law and we therefore review it *de novo*. *Commonwealth v. Hasken*, 265 S.W.3d 215 (Ky.App. 2007). *See also Commonwealth of v. Plowman*, 86 S.W.3d 47, 49 (Ky. 2002). KRS 321.181(5)(a) defines the practice of veterinary medicine as follows:

[t]o diagnose, treat, correct, change, relieve, or prevent:
animal disease, deformity, defect, injury, or other
physical or mental conditions, including the prescription
or administration of any drug, medicine, biologic,
apparatus, application, anesthetic, or other therapeutic or

diagnostic substance or technique, and the use of any manual or mechanical procedure for testing for pregnancy, or for correcting sterility or infertility, or to render advice or recommendation with regard to any of the above[.]

Although judicial interpretation must be guided by divining the legislature's intent, "[t]he most commonly stated rule in statutory interpretation is that the 'plain meaning' of the statute controls." *Wheeler & Clevenger Oil Co., Inc. v. Washburn*, 127 S.W.3d 609, 614 (Ky. 2004).

Lambert argues that the plain meaning of the words "diagnose, treat, correct, change, relieve or prevent" have a commonly understood meaning of recognizing and treating the presence of disease from its symptoms. *See Mabry v. County of Cook*, 733 N.E.2d 737, 745 (Ill. App. Ct. 2000) (finding that the plain meaning of "diagnosis" was "determining a medical condition by physical examination or by study of it's symptoms"); *Braun v. Board of Dental Examiners*, 702 A.2d 124, 128 (Vt. 1997) (finding that "diagnosis" means the "identification of a disease or other underlying disorder through investigation of its manifestations; as such, it is a problem-solving activity based, in part, on physical examination and observation over the course of the illness or disorder"). Further, Black's Law Dictionary defines "diagnosis" as follows:

[a] medical term, meaning the discovery of the source of a patient's illness or the determination of the nature of his disease from a study of its symptoms. The art or act of recognizing the presence of disease from its symptoms, and deciding as to its character, also the decision reached, for determination of type or condition through case or

specimen study or conclusion arrived at through critical perception or scrutiny.

BLACK'S LAW DICTIONARY 453-454 (6th ed. 1990).

Lambert argues that he did not diagnose, treat, correct, change, relieve, or prevent any disease, deformity, defect, or injury or other physical or mental conditions. Instead, he provided opinions regarding the identification and procurement of thoroughbreds that he believed possessed the potential to race successfully. We agree that Lambert did not practice veterinary medicine under the terms of the statute. At trial, Ramsey admitted the following: (1) Lambert never administered any medications; (2) Lambert was never involved in any treatment of a horse; (3) Lambert's limited role was to identify racing prospects and advise which horses to buy and sell; and (4) Ramsey retained other licensed individuals to handle all veterinarian related issues at the sales and elsewhere.

Further, Lambert argues that heart scanning is extremely common in the horse racing industry and, in fact, Ramsey is still utilizing an unlicensed expert to conduct heart scans on horses he intends to purchase. The Kentucky Board of Veterinary Licensure is aware of the practice and has individuals at the thoroughbred auctions, but has never taken any administrative action to try to halt the practice.

Based on the foregoing, we cannot say that Lambert was practicing veterinary medicine without a license in the state of Kentucky. The heart scans he conducted were in no way utilized to diagnose or treat any of the horses, nor did

anyone rely on such diagnosis or the results thereof for treatment. Accordingly, the trial court incorrectly found that Lambert's use of heart scans for Ramsey constituted the practice of veterinary medicine under Kentucky law and incorrectly awarded damages to Ramsey on his counterclaim. Therefore, we must reverse.

The pertinent Florida statute states:

“Practice of veterinary medicine” means diagnosing the medical condition of animals and prescribing, dispensing or administering drugs, medicine, appliances, applications or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease thereof; performing any manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of animals; or representing oneself by the use of titles or words, or undertaking, offering, or holding oneself out as performing any of these functions. The term includes the determination of the health, fitness, or soundness of an animal.

FLA. STAT. ANN 474.202(9). Through the use of the words “prescribing, dispensing or administering drugs,” the Florida Legislature made it clear that in order for someone to be practicing veterinary medicine, he or she must be engaged in the administration of medications. In the instant case, it is clear that Lambert never prescribed, dispensed, or administered drugs or medications to any horse. As such, Lambert was not engaged in the practice of veterinary medicine as that term is defined under Florida law. Therefore, we reverse the trial court's finding that Lambert was engaged in the unlawful practice of veterinary medicine in the state of Florida.

Ramsey's main argument on appeal is that because the trial court found that Lambert practiced veterinary medicine without a license, a judgment in Ramsey's favor was required on Lambert's claims. Ramsey claims that Lambert's unlicensed practice of veterinary medicine rendered the contract illegal and cites *Barnell v. Jacobs*, 200 S.W.2d 940, 942 (Ky. 1947), for the proposition that courts will not enforce illegal contracts. However, Ramsey's arguments are rendered moot in light of our holding above that heart scanning was not the unlicensed practice of veterinary medicine. Even assuming that the heart scans were the unlicensed practice of veterinary medicine, the contract was not an illegal contract.

"[C]ontracts voluntarily made between competent persons are not to be set aside lightly." *Jones v. Hanna*, 814 S.W.2d 287, 289 (Ky.App. 1991). In *Jones*, this Court stated that "[a]s the right of private contract is no small part of the liberty of the citizen, the usual and most important function of courts is to enforce and maintain contracts rather than to enable parties to escape their obligations on the pretext of public policy or illegality." *Id.* Consequently, a party may not escape his or her contractual obligations under the guise of public policy or claimed illegality unless it is shown that the contravention of public policy, or the commission of an illegal act, was the direct object and purpose of the contract. *See Yeager v. McLellan*, 177 S.W.3d 807, 809 (Ky. 2005).

In the instant case, we do not find that the heart scans performed by Lambert were an illegal act, nor were they the practice of unlicensed veterinary medicine as defined by Kentucky or Florida law. However, even if the heart scans

constituted an illegal act, the heart scans were not the direct object and purpose of the contract. Instead the direct object and purpose of the contract was for Lambert to identify and help purchase potential thoroughbred racing horses. Lambert's services were to include managing Ramsey's yearlings, performing wind tests on Ramsey's horses, and photographing and grading horses using other systems, including one system called Fotoselect. The heart scans Ramsey focuses on were only one part of the services Lambert was to provide at sales. Lambert and his team also viewed hundreds of horses, observed their physical conformation, photographed them, and watched them walk, breeze, and gallop. Thus, we cannot now in retrospect say that the entire purpose of the contract was for Lambert to perform heart scans.

Accordingly, the trial court made no error in submitting Lambert's contract claims to the jury. The jury determined that Ramsey and Lambert agreed to all the terms under the Sales paragraph of the October 2001 letter. Therefore, their verdict in favor of Lambert in the amount of \$250,000.00 is proper, and we decline to set it aside on grounds of illegality. Further, because we have held that the contract was not illegal, we decline to address Ramsey's argument that the contract should be deemed void.

Ramsey also argues that the trial court made three evidentiary errors requiring reversal. We review a trial court's evidentiary rulings for an abuse of discretion. *Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575, 577 (Ky. 2000). The test for abuse of discretion is "whether the trial judge's decision was

arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Miller v. Eldridge*, 146 S.W.3d 909, 914 (Ky. 2004). Trial judges are afforded broad discretion in deciding whether or not to admit certain evidence. *Wise v. Commonwealth*, 600 S.W.2d 470, 472 (Ky.App. 1978).

Ramsey first argues that the trial court improperly prevented him from introducing four written contracts between Lambert’s companies and Ramsey and from questioning Lambert and his witnesses about them for impeachment purposes. Lambert argues that the trial court properly excluded these documents because they were all created after the events at issue in this litigation, none were signed by both Lambert and Ramsey, and they all concerned irrelevant matters.

A careful review of the record indicates that all the documents are dated after May 1, 2002, which is when the oral contract between Ramsey and Lambert purportedly expired. Initially, then, the documents are not relevant in ascertaining the extent of the oral agreement, because they were created after the oral agreement had expired. However, several events in the case took place after the oral agreement expired, including a bonus paid to Lambert by Ramsey after Roses In May won the Dubai World Cup, and thus it appears that the agreement between Ramsey and Lambert also extended beyond May 2002.

The record also denotes that none of the documents was signed by both Lambert and Ramsey and that none of the documents pertain to the oral agreement in any way. KRE 401 defines “relevant evidence” to mean “having the tendency to make the existence of any fact that is of consequence to the

determination of the action more probable or less probable than it would be without the evidence.” Given the trial court’s finding that the letters did not pertain in any way to the oral agreement at issue in this case and our review indicating the same, it was proper for the trial court to exclude the letters as not relevant under KRE 401. Thus, the trial court did not abuse its discretion in so doing.

Ramsey argues that Lambert opened the door to the admissibility of the four disputed documents by testifying “untruthfully” that he “never” had written contracts and always had oral contracts. However, the record reflects that Lambert did not testify that he never had written contracts, but instead stated that he “pretty well” used oral contracts and that it was standard in the horse business to take people at their word. He specifically said there might have been a time when he used a written contract but that he generally used oral contracts. Thus, we do not find Lambert opened the door for the admission of the four documents, and we do not find the trial court abused its discretion in so ruling.

Ramsey next argues that the trial court abused its discretion by allowing the jury to hear how much money Ramsey made from owning Roses In May. Ramsey claims that the proceeds from the horse should have been excluded as irrelevant because such evidence was unduly prejudicial to Ramsey. We disagree. The amount of money that Roses In May earned in races and the terms under which he was sold were directly relevant to whether bonuses were due under the parties’ contract. Under the terms of the October 2001 letter and the December

2001 oral agreement, the jury was to decide whether Ramsey owed Lambert any bonuses or payments for his services. The amounts of winnings that the horses Lambert assisted Ramsey in purchasing was related to the bonuses Lambert would receive under the agreement. Thus, the evidence was both relevant and necessary for the jury to determine what, if any, money was owed to Lambert under the agreement. The trial court did not abuse its discretion in permitting evidence of the profits Ramsey received as a result of owning and selling Roses In May.

Ramsey next argues that Lambert's counsel improperly played to the jurors' passions during closing arguments by urging them to render a verdict that was fair and that the trial court abused its discretion in refusing to admonish the jury. "Great latitude is allowed counsel in closing arguments." *Commonwealth, Dept. of Highways v. Reppert*, 421 S.W.2d 575, 576 (Ky. 1967). Further, Ramsey bears the burden of showing that the trial court abused its discretion and that counsel's argument was improper and sufficiently prejudicial to warrant a new trial. We do not see how counsel urging the jury to decide the case fairly is in any way prejudicial. Lambert's counsel asked the jury to award money to Lambert because Ramsey had allegedly agreed to pay such money under the contract. In no way was this prejudicial, nor did it justify a new trial. The trial court did not abuse its discretion in failing to admonish the jury.

Finally, Ramsey argues that the trial court erred by limiting the statute of limitations to five years under KRS 413.120. Ramsey claims that the trial court should have implemented the discovery rule, whereby the court tolls the statute of

limitations until Ramsey knew or should have known that Lambert provided illegal services. *See Perkins v. Northeastern Log Homes*, 808 S.W.2d 809 (Ky. 1991). *See also Louisville Trust Co. v. Johns-Manville Products Corp.*, 580 S.W.2d 497 (Ky. 1979). Ramsey argues that the trial court should have implemented the discovery rule because Lambert actively obstructed him from discovering that he did not have a veterinary license and held himself out to be a doctor.

We disagree with Ramsey. “The courts in this Commonwealth have been reluctant to extend the discovery rule and have applied it narrowly.” *Roman Catholic Diocese of Covington v. Secter*, 966 S.W.2d 286, 289 (Ky.App. 1998). “The Legislature’s power to enact statutes of limitations governing the time in which a cause of action must be asserted is, of course, unquestioned.” *Munday v. Mayfair Diagnostic Laboratory*, 831 S.W.2d 912, 914 (Ky. 1992) (citing *Saylor v. Hall*, 497 S.W.2d 218, 224 (Ky. 1973)). Each time the general assembly has intended for the discovery rule to apply in a specific context, it has enacted an applicable statute. *See* KRS 342.316(4) (worker’s compensation) and KRS 413.130(3) (fraud). There is no statute authorizing the use of the discovery rule in a cause of action involving a violation of KRS 321.190 (practicing veterinary medicine without a license) or the five year statute of limitations in KRS 413.120(2). The trial court did not err in holding that the discovery rule was inapplicable to Ramsey’s counterclaim for fees paid to Lambert, and given our finding that Lambert did not practice veterinary medicine without a license, the issue is moot.

Accordingly, the judgment of the Fayette Circuit Court that Lambert practiced unlicensed veterinary medicine in Kentucky and Florida is hereby reversed. The judgment in favor of Ramsey in the amount of \$17,966.00 for damages as a result of the unlicensed practice of veterinary medicine in Kentucky is also hereby reversed. The judgment of the Fayette Circuit Court awarding \$250,000.00 to Lambert under the oral contract with Ramsey is hereby affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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